

EMERY ENERGY, INC.

IBLA 80-70

Decided May 15, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, subjecting oil and gas leases N-22218 and N-22221 to Wilderness Protection Stipulations.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Oil and Gas Leases: Stipulations

Departmental regulations 43 CFR Subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

APPEARANCES: R. J. Hollberg, Jr., President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated September 28, 1979, by the Nevada State Office, Bureau of Land Management (BLM), requiring Emery Coal Inc., now Emery Energy, Inc., to execute special stipulations as a condition for issuing oil and gas leases N-22218, and N-22221.

The stipulation objected to by appellant is the standard Wilderness Protection Stipulation (WPS), which provides in part:

1. Any oil or gas activity conducted on the leasehold for which a surface use plan is not required under NTL-6 (for example; geophysical and seismic operations) may be conducted only after the lessee first secures the consent of the BLM. Such consent shall be given if BLM determines that the impact caused by the activity will not impair the area's wilderness characteristics.

2. Any oil and gas exploratory or development activity conducted on the leasehold which is included within a surface use plan under NTL-6 is subject to regulation (which may include no occupancy of the surface) or, if necessary, disapproval until the final determination is made by Congress to either designate the area as wilderness or remove the section 603 restrictions.

Appellant protests the inclusion of the subject land in the wilderness inventory and asserts that BLM is abusing its authority under the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 (1976)) by unnecessarily burdening energy exploration.

[1] Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1781 (1976), requires the Secretary of the Interior to review certain roadless areas of the public lands for possible designation as wilderness under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-36 (1976). During the review period such lands are to be managed so as not to impair their wilderness potential. The regulations at 43 CFR Subpart 3109 authorize BLM to require lessees to agree to "such special stipulations as are necessary for the protection of the lands * * *." 43 CFR 3109.2-1. This regulation and section 603 of FLPMA provide ample authority for BLM's decision to require the WPS on these leases. The WPS here involved has recently been approved by this Board in Palmer Oil and Gas Co., 43 IBLA 115 (1979) and Reserve Oil, Inc., 42 IBLA 190 (1979). See also Solicitor's Opinion, 86 I.D. 89 (1979). Thus, we find appellant's argument on appeal without merit.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

